cancelled" contained in the will made in 1906, because of the codicil of 1911, stating "I have read over and resealed this will each summer before leaving home, and now wish to make the following changes," but not referring to the clause first above quoted. *Held,* that the will and codicils manifested no intent to cancel the mortgage debt, and that the executors were liable therefor. *Edwards' Estate,* (Pa. 1916), 98 Atl. 879.

The court recognizes the accepted rule that the codicil makes the will speak from the date of the codicil, but puts its decision on the qualification (quoting JARMAN, WILLS (6th Eng. Ed. 1910) 203), that "Although it is true that a codicil confirming a will makes the will for many purposes to bear the date of the codicil, yet this rule is subject to the limitation that the intention of the testator be not defeated thereby. If, therefore, the testator, in making his will, obviously means its provisions to apply to a state of circumstances existing at its date, republication will not make its provisions apply to the state of circumstances existing at the date of the codicil." The court also relies on *Alsop's Appeal,* 9 Pa. 384. The cases on the exact point involved in the principal case are not numerous, only the following have been found: *Smith* v. *Coale,* 4 Pa. 376, where a son-in-law contended that a loan to him was cancelled by the republication of a will which contained the provision, "I give to my daughter, E, the wife of J. S., exclusive of what I advanced her and her husband, and of the money her husband has since received from me, $3,325.00, to be paid her one year after my decease." Although the codicil related to another subject, the court held the debt cancelled, saying, "the legal operation of the codicil to republish the will, can only be negatived by the contents of the codicil itself showing by internal evidence, not that such an intention had no existence, but that a contrary intent was entertained." The provision in *Van Alstyne* v. *Van Alstyne,* 28 N. Y. 375, was, "I release and acquit all and each of my children from any charge I have made against them, or either of them." The court held that the codicil made the will speak from the date of the codicil, and all "charges" would be released, but that the word "charges" was not broad enough to embrace a promissory note of one of the children, held by the testator. But in *Rhodes* v. *Rhodes,* 176 Ill. App. 533, a codicil dated two years after a note had been given, was held to discharge the note by republishing the will which declared that, "no note, check, book-account, or other evidence of indebtedness shall be charged against any of my children, unless so stated in the body of the writing"; the note in question had no such notation.

WILLS—SPECIFIC PERFORMANCE OF CONTRACT TO MAKE A WILL.—In accordance with a parol agreement that A should reside with and care for them, B and C, his parents, executed and delivered their joint will, to become operative upon the death of the survivor. A carried out his agreement for fifteen years, until his death, after which, in spite of offers by the wife of A to continue the agreement, B and C left the home of A, to reside with others of their children. The father survived the son only a few months, but between their respective deaths, a new will was made by the father an-

nulling the rights of the heirs of A under the former will. The present suit is brought in the life time of the mother, to enforce the contract by declaring the property held in trust by the mother for her support but subject to the vested interests therein of the heirs of A. *Held,* that the relief prayed should be granted on the grounds that a will executed under such an agreement was contractual as well as testamentary; that the contract was substantially performed, and to such an extent that equity would fasten a trust upon the property for the benefit of the heirs of the beneficiary under the contract as against any transferee or devisee. *Torgerson et al.* v. *Hauge et al.* (N. D. 1916), 159 N. W. 6.

The court follows what has been called "an unbroken current of authority," beginning in 1682 with *Goilmere* v. *Battison,* 1 Vern. 48, 1 Eq. Cas. Ab. 17, pl. 4, to the effect that contracts to devise are valid and, if not performed. entitle the party to whom the devise was to be made to require the devisee, heir, or purchaser with notice from the other party, to make conveyance. See also *Johnson* v. *Hubbel,* 10 N. J. Eq. 332, 66 Am. Dec. 782; *White* v. *Winchester,* 124 Md. 518, 92 Atl. 1057, Ann. Cas. 1916D 1156. Though a will is said to be ambulatory and revocable, and an agreement to make a will is incapable of being specifically enforced, yet to prevent fraud, equity will enforce the rights of the promisee by holding the executor, heir, or devisee, a trustee to perform the contract. *Bolman* v. *Overall,* 80 Ala. 451, 60 Am. Rep. 107. Specific performance will be denied unless there is a definite and specific agreement established. *Beyer* v. *Schlenker* (Mo. 1915), 181 S. W. 69. Though such a contract, under the statute of frauds, must be in writing, a part performance will avoid the statute; and where there has been full performance on the part of the promisee, equity will enforce to prevent fraud. *Whitney* v. *Hay,* 181 U. S. 77, 45 L. Ed. 758. There are a few courts which limit the cases where they will enforce specific performance to those in which "under peculiar circumstances" plaintiff cannot be compensated in money. *Morrison* v. *Land,* 169 Cal. 580, 147 Pac. 259; *Robertson* v. *Corcoran,* 125 Minn. 118, 145 N. W. 812. See also *Woods* v. *Dunn* (Ore. 1916), 159 Pac. 1158. Where the promisee has not fully performed, but failure is due to obstinacy of the promisor, as where after making a contract for care and maintenance, he leaves the home of the promisee and lives with a third person, the promisee is entitled to specific performance. *Bruce* v. *Moon,* 57 S. C. 60. A different question arises in those cases where the failure of complete performance has not been due to interference of the promisor. In *Tussey* v. *Owens,* 139 N. C. 457, the complaint was held insufficient where there was a failure to allege specifically that plaintiff had fully performed, or to show some legal excuse for not performing; and in *Bennet* v. *Burkhalter,* 257 Ill. 572, 101 N. E. 189, 44 L. R. A. N. S. 733, relief was denied where the contract was found to have been renounced by the plaintiff. Courts are even reluctant to give recovery on quantum meruit in these cases. *Ptacek* v. *Pisa,* 231 Ill. 522, 83 N. E. 221, 14 L. R. A. N. S. 537. The principal case is distinguishable from these cases, in that the failure to perform was not due to the interference of the promisor, or unwillingness of the promisee. *Bourget*

v. *Monroe,* 58 Mich. 563, 25 N. W. 514; *Cox* v. *Cox,* 26 Grat. (67 Va.) 305; and *Snyder* v. *Snyder,* 77 Wis. 95, 45 N. W. 818, are cases more directly in point, in each of which the death of the promisee within the lifetime of the promisor was the cause of his failure to complete his contract.

WILLS—TESTAMENTARY INTENT IN OLOGRAPHIC WILL.—An unsigned letter written by deceased and addressed to his executor was fastened to signed sheets of writing, (which were admitted to probate as an olographic will), and was enclosed with them in a sealed envelope, which was endorsed, "my last will" dated and signed. It appeared from the context of the letter that it was written subsequent to the writing of the will. *Held,* that the unsigned letter formed no part of the will, as it was not executed with the formal requirements of the statute, nor did there appear in the letter any intent that it should be considered as testamentary, but was mere personal advice to the executor. *In Re Keith's Estate,* (Cal. 1916), 159 Pac. 705.

The two classes of cases in which questions concerning olographic wills arise are, (1) whether there is a sufficient compliance with statutory requirements; (2) whether there appears an intention to make a testamentary writing. The writing offered in the principal case was defective in both of these particulars. That a name written on the envelope in which the writings were sealed, was not a signature, was also held in *In re Tyrrell's Estate,* 17 Ariz. 418, 153 Pac. 767, 14 MICH. LAW REV. 522. As to testamentary intent, it was held in *Smith* v. *Smith,* 112 Va. 205, 70 S. E. 491, 33 L. R. A. N. S. 1018, that it must satisfactorily appear that the testator intended the very paper to be his will, and not a memorandum as to his intention so to dispose of his property. In *Alston* v. *Davis,* 118 N. C. 202, 24 S. E. 15, the deceased had stated in an ordinary letter to his sister that he wanted her to have all of his property if he should die; it was held that this was such an expression of his wishes as to the disposition of his property as would be given effect after his death. A letter to his attorney, requesting that on account of his recent marriage certain changes be made in his will was allowed probate in *Barney* v. *Hayes,* 11 Mont. 571, 29 Pac. 282.